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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,769	10/22/2003	Nayan Dalal	TRADE 3.0-002	6959
7590	08/12/2004		EXAMINER	
EZRA SUTTON, PA PLAZA 9 900 ROUTE 9 WOODBRIDGE, NJ 07095			NGUYEN, SON T	
			ART UNIT	PAPER NUMBER
			3643	
DATE MAILED: 08/12/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/690,769	DALAL ET AL.	
	Examiner	Art Unit	
	Son T. Nguyen	3643	<i>MW</i>

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 12 May 2004.
- 2a) This action is **FINAL**.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1 and 3-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1 and 3-12 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 22 October 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 1,3-5,7-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5586350 (herein 350).**

For claim 1, 350 discloses in fig. 2, a bolstered pet bed, comprising: a) a bottom cushion outer covering 15 having a bottom cushion interior compartment, and a bottom cushion 12 for being received therein;

b) a bolster cushion outer covering 15' having a bolster cushion interior compartment, and a bolster side cushion 13 for being received therein;

c) connecting means 14 for removably connecting said bottom cushion outer covering to said bolster cushion outer covering for forming said bolstered pet bed; said connecting means includes a hook and loop fastener connected to both said bottom cushion outer covering and to said bolster cushion outer covering in an affixed and secure manner;

d) first closure means (col. 4, lines 65-67 and col. 5, lines 1-5) for opening and closing said bottom cushion interior compartment for removably inserting said bottom cushion therein; and

e) second closure means (col. 4, lines 65-67 and col. 5, lines 1-5) for opening and closing said bolster cushion interior compartment for removably inserting said bolster side cushion therein; and

f) said hook and loop fastener being affixed to a side of said bottom cushion outer covering having said bottom cushion therein, and to a side of said bolster cushion outer covering having said bolster side cushion therein, such that said a hook and loop fastener securely holds in place said bolster side cushion in a secure and upstanding manner relative to said bottom cushion and thereby forms an upstanding and raised headrest surface with respect to said bottom cushion for resting of a pet's head on said raised headrest surface (see fig. 2).

However, 350 is silent about the connection means being a zipper member. It would have been an obvious substitution of functional equivalent to substitute a known type of connection means such as the hook and loop fastener of 350 with another known type of connection such as a zipper member, since both types of connection means would perform to connect the bottom cushion outer covering with the bolster cushion outer covering.

For claim 3, it is notoriously well known in the art of connection that zipper members include zipper strips to be attached to the elements that are to be connected, in this case, the bottom cushion outer covering and the bolster cushion outer covering. Thus, with the motivation of substitution of functional equivalent of one type of connection means for another type of connection means as explained above, it would have been obvious to one having ordinary skill in the art at the time the invention was

made to employ a zipper member to include a first zipper strip element being fixedly attached to an outer side wall section of said bottom cushion outer covering and a second zipper strip element being fixedly attached to an inner side wall section of said bolster cushion outer covering in the bolstered pet bed of 350, since it is notoriously well known in the art of connection that a zipper member includes zipper strips for attaching to the elements being connected together.

For claim 4, 350 discloses wherein said first closure means for opening and closing said bottom cushion interior compartment are selected from the group consisting of a zipper member or hook and loop fasteners (col. 4, lines 65-67 and col. 5, lines 1-5).

For claim 5, 350 discloses wherein said second closure means for opening and closing said bolster cushion interior compartment are selected from the group consisting of a zipper member or hook and loop fasteners (col. 4, lines 65-67 and col. 5, lines 1-5).

For claim 7, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the bottom cushion of 350 with a diameter of 32 inches and a depth of 10 inches at the center of said bottom cushion, since it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable ranges until the desired effect is achieved involves only routine skill in the art.

For claim 8, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the second zipper strip element on said inner side wall section of said bolster cushion outer covering being adjacent to said second

closure means in the bed of 350, since such zipper configuration is notoriously well known in the art to have strip elements for structural reinforcement of the zipper.

For claim 9, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the zipper member (in ref. to the explanation above regarding substitution of one connection means for another connection means) with a length of 66 inches in the bed of 350, since it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable ranges until the desired effect is achieved involves only routine skill in the art.

For claim 10, 350 discloses wherein said bottom cushion and said bolster side cushion each have a filling of polyester fiber (col. 4, line 5).

For claim 11, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the zipper member (in ref. to the explanation above regarding substitution of one connection means for another connection means) of said first closure means with a length of 30 inches in the bed of 350, since it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable ranges until the desired effect is achieved involves only routine skill in the art.

For claim 12, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the zipper member of said second closure means (in ref. to the explanation above regarding substitution of one connection means for another connection means) with a length of 24 inches in the bed of 350, since it has been held that where routine testing and general experimental conditions are present,

discovering the optimum or workable ranges until the desired effect is achieved involves only routine skill in the art.

3. **Claim 6** is rejected under 35 U.S.C. 103(a) as being unpatentable over 350 (as above) in view of US 5765502 (herein 502). 502 teaches a pet bed in which a bolster side cushion is semi-circular in shape. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the bolster side cushion of 350 in a semi-circular shape as taught by 502, depending on the user's preference to do so for his/her intended use. In addition, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the bolster side cushion of 350 as modified by 502 with an arc length of 66 inches and a maximum width of 10.5 inches, since it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable ranges until the desired effect is achieved involves only routine skill in the art.

#### ***Response to Arguments***

4. Applicants' arguments filed 5/12/04 have been fully considered but they are not persuasive.

**Applicants argued that 350 does not teach a zipper member in order to form an upstanding and raised headrest surface for resting of a pet's head thereon.**

As explained above, to replace one known type of connection means such as hook and loop fastener of 350, with another known type of connection means such as the zipper member of the present invention would be obvious substitution of functional

equivalent devices for both types of connection means would perform to provide a connection between the elements, in this case, the bottom cushion outer covering and the bolster cushion outer covering. In addition, clearly from fig. 2 of 350 that the hook and loop member 14 is able to form an upstanding and raised headrest surface for the pet, thus, replacing zipper member should do the same.

**Applicants argued that 350's connections of the restick adhesive strip or the hook-and-loop fastener would be easily separated by a dog or other pet, wherein the zipper member of the present invention would not separate and the outer coverings are firmly affixed and secured to each other in an upstanding manner that does not change position. The present invention's configuration and structure would be highly unlikely to separate by a pet when using the bolstered pet bed.**

Applicants' alleged statement that 350's hook and loop fastener would be easily separated by a dog or pet is merely a statement of assumption without evidence of such occurrence. To say that Applicants' zipper member is highly unlikely to be separated by a pet would, again, be a mere assumption without evidence of such occurrence of "highly unlikely". As any pet owner would know, a dog can tear up anything so nothing is highly unlikely, especially items such as a pet bed.

**Applicants argued that 502 does not teach zipper member attaching outer coverings of bottom cushion and bolster cushion.**

As stated above in the rejection, 502 was relied upon for the semicircular shape bolster and not zipper member or anything else. Thus, argument against 502 for zipper member is moot.

***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is (703) 305-0765. The examiner can normally be reached on Monday - Friday from 9:00 a.m. to 5:00 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon, can be reached at (703) 308-2574. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Customer Service at (703) 872-9325. The official fax number is 703-872-9306.

Art Unit: 3643



Son T. Nguyen

Primary Examiner, GAU 3643

August 9, 2004